

FARMINGTON POLICE DEPARTMENT

POLICY AND PROCEDURE



Policy Number:
101-10

Effective Date:
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Subject:
Search and Seizure

Approved by:

A handwritten signature in black ink, appearing to read "S.D. Hebbe".

Steven D. Hebbe, Chief of Police



PURPOSE:

To provide general guidelines and procedures for agency law enforcement personnel to follow in conducting searches and seizures which have not been reviewed and authorized by judicial personnel.

POLICY:

It is the policy of the Farmington Police Department to have procedures which govern search and seizure without a warrant by agency personnel.

PROCEDURE:

Definitions:

The following definitions shall apply for the purpose of this policy:

1. **Probable Cause** - More than just a suspicion. It exists where the facts and circumstances within an officer's knowledge, based upon reasonable, trustworthy information, which would lead a reasonable person to believe that an offense has been, or is being, committed or that fruits, instrumentality, and evidence of a crime are in a place to be searched;
2. **Reasonable Suspicion** - A step down from probable cause. It does not entitle an officer to make an arrest or even conduct the kind of search that probable cause permits. It does, however, permit an officer to further investigate based upon that officer's suspicion, based upon observable facts and logical inferences, that a crime has been, is being, or is about to be committed.
3. **Search** - Looking for evidence or a person involved in a crime by a law enforcement officer in a place where a person has a reasonable expectation of privacy.
4. **Seizure** - Taking possession of a person or object by a law enforcement officer or agent;
5. **Stop** - Occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen;
6. **Frisk/Pat Down** - A patting of the outer clothing of an individual by a law enforcement officer with the flat of the hand for the purpose of locating weapons;
7. **Inventory** - Documentation of all personal property in the lawful custody of the police, including property inside closed compartments or locked containers. Its purpose is to protect the owner's property

from loss or damage and to protect the police department against claims of lost, stolen, or vandalized property.

Guidelines and Considerations:

The general rule of the Fourth Amendment is that law enforcement must obtain a search warrant from a magistrate before conducting a search or seizure. It is preferable to conduct searches and seizures with a warrant. However, the scope of the Fourth Amendment is limited and does not apply in all circumstances and certain exceptions to the warrant requirement allow for searches and seizures under certain circumstances.

Stops:

A stop is conducted when an officer has reasonable, articulable, and particularized suspicion that the individual has committed, is committing, or is about to commit a crime. The duration of the stop is limited to the reasonable amount of time needed to verify or quell the officer's suspicion. During a stop, the officer may do the following:

1. Request the identification of all persons who are the subject of the reasonable suspicion;
2. Ask questions that are reasonably related to the reason for the stop;
3. Expand the scope of the stop when the officer develops reasonable and articulable suspicion that other criminal activity has been or may be afoot;
4. Evaluate the need for a frisk.

Any questioning, searching and consent requests made during a stop must be based on specific, articulable facts, not unsupported intuitions or inarticulable hunches. The fact that the officer "always asks these questions" is not a justification for asking them.

Frisks:

A frisk may be performed during a valid stop when an officer has reasonable suspicion that the person may be armed and dangerous. A frisk is performed for the safety of officers and others to locate weapons. It is not a search for evidence of a crime. Frisks may not be performed when a valid stop does not exist. In addition, a frisk must be stopped if the reasonable suspicion for the original stop is removed.

In accordance with established New Mexico Case Law, an officer's right to frisk is automatic whenever the suspect has been stopped upon the suspicion that a person has committed, was committing, or was about to commit a type of crime for which the offender would likely be armed. This includes whether the weapon would be used to actually commit the crime, to escape, or for protection against the victim or others involved. These crimes include homicide, robbery, criminal sexual penetration, assault/battery with a weapon, burglary, large narcotics transactions, or other serious crimes of physical violence not including misdemeanor assaults or batteries.

To conduct a frisk of a person suspected of engaging in a nonviolent offense, such as possession of small amounts of marijuana, or possession of liquor, additional articulable facts of potential danger must be present.

A frisk may also apply to the inside of a vehicle during a traffic stop. When officers are confronted with a potentially dangerous situation during a vehicle stop, they may frisk the passenger area by looking in the passenger compartment and in its unlocked containers for weapons in which a weapon could be placed or hidden, and if the officers reasonably believe that the occupants of the vehicle are dangerous and may gain immediate control of weapons.

The following guidelines shall be followed during a frisk:

1. If an item felt during a frisk specifically feels like a gun, knife, club, or common weapon, it may be removed;
2. If an item felt during a frisk is hard and feels like it could be a weapon, it may be removed as long as the officer is able to specifically articulate why he or she believed the object is a weapon.
3. If an item felt during a frisk is soft or does not feel like a weapon, it may not be removed. However, officers may ask for consent to retrieve the item from the subject to identify it.

Plain Feel:

As a result of *Minnesota vs Dickerson*, the U.S. Supreme Court extended the scope of the frisk to allow for the confiscation of contraband that is immediately apparent to the police officer by using his sense of touch or feel when that officer is performing a lawful frisk. Under the Plain Feel Doctrine, the police officer must be able to determine simultaneously that the item is not a weapon and that the item is contraband. If the police officer cannot determine that the item is contraband without additional probing or investigation, the Plain Feel Doctrine does not apply.

Searches:

Searches may be made at places where a person has a reasonable expectation of privacy with a valid search warrant or where probable cause exists that fruits, instrumentality, evidence, or persons related to a crime are located in the place to be searched and one of the following exceptions to the search warrant requirement exists:

Search Incident to Arrest:

When an individual is placed under arrest, the area immediately accessible to this individual may be searched without a warrant as long as the search occurs at the same time as the arrest. The sole purposes of a search incident to arrest is to prevent the officers from being assaulted with weapons and to prevent the suspect from destroying contraband or evidence of a crime.

The scope of a search incident to the arrest of an occupant of a vehicle extends to the passenger area and unlocked containers found inside the vehicle. The trunk of a vehicle cannot be opened under this exception, unless it can be demonstrated that this location is readily accessible to the defendant at the time of arrest. A warrantless search of a vehicle conducted under the search incident to arrest exception is valid only if unique factual circumstances create a reasonable belief that evidence related to the crime for which the person was arrested may be found in the vehicle.

Areas immediately accessible to an arrestee may not be searched incident to arrest if the person is not going to remain in the area where the arrest was made.

A protective sweep may be made of a location at the time of an arrest if officers have reasonable suspicion to articulate that other persons are present who pose a threat to them. The sweep may only be made to areas where a person may be located. A protective search may be made at a location absent an arrest if officers can articulate that reasonable suspicion exists that persons are present who pose a clear threat to them.

Plain View:

Under the plain view exception to the warrant requirement, an item may be seized as evidence if, at the time the item is discovered, the item is in plain view, the officer has a legal right to be in the location where the item is observable, and the officer has probable cause to believe the item is contraband or evidence of a crime.

The fact that the item is contraband or evidence of a crime must be immediately apparent to the officer prior to the seizure of the item. For example, officers should not move or manipulate an item in order to locate the item's serial number or other identifiable markers unless it is immediately apparent that the item is contraband or evidence of a crime. If the serial number of an item is in plain view, then that serial number can be used to determine if the item is evidence of a crime.

When contraband or evidence of a crime is located under the plain view doctrine, officers should give consideration to obtaining a search warrant for additional, related contraband that may be concealed within the location where the contraband was found.

Motor Vehicle Searches under Movable Vehicle Exception:

In order to search a motor vehicle without a search warrant, there must be probable cause to believe a crime has been or is being committed and particular evidence of that crime exists in the vehicle. The vehicle must also be movable and in a public or semi-public place, and there must be a likelihood that the vehicle will be unavailable by the time a warrant is acquired due to exigent circumstances.

If these requirements are met, then a warrant less search of the vehicle may be conducted, including all compartments, packages, containers, and areas of the vehicle where the evidence being searched for could be concealed.

Due to recent case law in New Mexico regarding motor vehicle searches, officers encountering a vehicle under these circumstances should consider stopping and detaining the vehicle while a search warrant is obtained.

Inventory Searches of Seized Vehicles Other Property or Persons:

In all instances where a seized vehicle is legally towed by the police department, an inventory search of the vehicle will be conducted. This inventory search will consist of documentation of all personal property with apparent value or of apparent significant importance to the owner which is contained inside or upon the vehicle, including property inside closed compartments or locked containers within the vehicle. In regards to locked containers, officers may not damage the vehicle or property in any way to enter these containers.

Inventories will also be conducted on persons and their personal property when taken into lawful custody. This will include clothing worn by the individual, as well as all bags, backpacks or other containers in their possession.

The purpose of the inventory search is to protect the owner's property, to protect the police department against claims of lost, stolen, or vandalized property, and to guard the police from potential danger.

Hot Pursuit:

If probable cause exists to believe that a person being pursued committed a crime and is inside a building, officers may enter that building without a warrant to find the suspect as long as they were actively observing the person as they entered the building. This exception applies to all buildings, including private residences.

Warrant Arrest of Person inside a Residence:

In serving an arrest warrant on a person inside their own residence, a search warrant is not required to enter the residence in order to affect the arrest, as long as the probable cause exists that the person is inside of the residence at that time. However, if an officer has probable cause to believe a person for whom the officer has an arrest warrant is inside another person's residence, a search warrant for that residence must be obtained. Other exceptions to the warrant requirement, including consent and hot pursuit, can negate the requirement to obtain a search warrant.

Destruction of Evidence:

Evanescent evidence is criminal evidence that will change or evaporate in a manner that will destroy its evidentiary value, and, as a result, may be seized without a warrant due to exigent circumstances. The evanescent exception is most commonly applied in DWI cases in which blood samples are taken without a search warrant; however, this exception has also been applied to other situations.

If officers have reasonable, articulable facts that evidence of a crime is being destroyed or is in danger of imminently being destroyed, they may search a location and seize this evidence without a warrant to prevent its destruction. For example, officers observing a person disposing of evidence through the window of a residence may enter the residence without a warrant to stop that destruction.

Exigent Circumstances Involving Public Safety:

A search can be conducted without a warrant when an officer has probable cause that a crime has been committed and an emergency exists that requires the officer to act immediately. This applies to the search and seizure of both persons and places, including inside private residences. For example, if an officer hears screams for help coming from a house, the officer may enter without a warrant.

Consent Searches:

In order for a warrantless search by consent to be valid, the person granting the consent must have the authority and capacity to give consent. In determining whether a person has the authority to give consent, officers must reasonably believe that the consenting party has joint access to, and mutual use of, the property to be searched before the officers can act on the person's consent.

In determining whether a person has the capacity to give consent, officers should take into consideration the age and mental capacity of the person giving consent prior to acting on the person's consent.

The consent must also be knowing and voluntary, and not the result of force, threats, coercion, or promises of benefit to the person giving consent.

A person consenting to a search may explicitly limit consent to a certain area. When the limits of the consent are clearly given, either at the time of the search or afterwards, officers must comply with those limits. When the basis for a warrantless search is consent, consent may be withdrawn at any time prior to completion of the search.

The person giving consent must have the means and ability to immediately revoke or alter that consent at any time. In addition, all persons who have an expectation of privacy who are present must give independent consent. If one of the persons with the expectation of privacy is not present because they were removed by law enforcement, then a search may not be conducted without that person's consent.

At The Scene of a Crime:

Warrantless crime scene searches may be conducted when the circumstances meet one of the preceding exceptions to the warrant requirement. However, New Mexico law does not contain an exception to the warrant requirement specifically for crime scene searches, therefore, in cases where none of the previously listed exceptions apply, a search warrant shall be obtained prior to processing the crime scene.

Strip and Body Cavity Searches:

A search incident to an arrest extends to a full search of the person. The same is true for a search incident to incarceration. The full search of the person authorized after an arrest, however, does not permit a strip search or bodily intrusion.

A strip search is a serious invasion of an arrestee's rights. No matter how professional or courteous the manner used in conducting a strip search, it remains an embarrassing and humiliating experience. Accordingly, strip searches are not standard procedure for searches incident either to arrest or detention.

Due to the extremely intrusive nature of a strip search, strip searches of arrestees, based on less than probable cause, are only allowed where such searches were necessary to protect the overriding security needs of the detention personnel. More specifically, an officer shall only authorize a strip search when that officer has reasonable suspicion to believe that a particular detainee harbors weapons or dangerous contraband. When the decision is made to conduct a strip search, the officer will immediately notify their supervisor and brief them of the facts and circumstances surrounding the decision. After careful consideration of all the facts, the supervisor will be responsible for granting or denying the search.

In all cases where a strip search is justified, the manner in which the search takes place must also be reasonable in order to meet the 4th Amendment standards. Thus, these searches should be done in a professional manner, using a searcher of the same sex (unless exigent circumstance exist), under sanitary conditions, without physical contact (unless exigent circumstances exist), and finally, done with a reasonable degree of privacy.

Conducting a strip search in any area other than the San Juan County Detention Center is strongly discouraged and should only be done in exigent circumstances.

All strip searches conducted at the Detention Center will be conducted according to the Searches Policy of San Juan County Detention Center.

Strip searches are documented in the offense report narrative. The report will consist of the prisoners' name, reason for the search, the name of the supervisor that authorized the search, the names of the detention and/or department employees that conducted the search, and the results of the search.

Body cavity searches, by their very nature, constitute a high degree of intrusiveness, even when supported by a warrant. Due to the specialized environment and training required to safely and humanely conduct body cavity searches, licensed medical professionals acting under court order were historically utilized to conduct such searches. However, recent civil and criminal cases within the State of New Mexico, and elsewhere, have tended to discourage medical practitioners from performing such searches, even under court order, and no known local medical provider is available to conduct such a search. As such, employees of the Farmington Police Department shall not conduct, nor authorize to be conducted, body cavity searches. In such cases where officers have cause to believe that evidence, contraband, or weapons are possessed internally by an arrestee, the

Detention Center supervisor shall be notified of the facts surrounding the officer's belief. It is the responsibility of the Detention Center to initiate procedures by which the arrestee's health, safety, and privacy are secured whilst also ensuring that the health and safety of other arrestees, Detention Center staff, and law enforcement officers, is secure, in accordance with the Detention Center's policies. In the event that officers have cause to believe that evidence, contraband, or weapons are possessed internally by a detainee, the on duty supervisor shall be immediately notified of the facts surrounding the officer's belief.

Other Types of Searches and Seizures:

Other situations allow for the officers to contact persons, to perform pat downs and to search people. These situations are outlined in the Responding to Persons with Mental Illness 241-17, Emergency Roadblocks, Checkpoints, and Observation Points 261-14, and Social Service Diversion Programs 501-01 policies.

Legal Update:

Search and Seizure laws are in constant flux. Although the Farmington Police Department will take steps to ensure that its officers are updated on current case law, through venues such as briefing training and mandated in-service training, it is ultimately up to each individual law enforcement officer to keep up to date with legal changes. Failing to do so will result in losses in the courtroom in both criminal and civil arenas.

The procedure and guidelines in this policy are designed as a tool to officers and do not supersede current case law.